

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-4-233

Amend

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rule is implementing (specific):

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. § 3-201.01

3. The effective date of the rule:

Sixty days after the Council files the rules with the Secretary of State's Office.

4. A list of all previous notices appearing in the Register addressing the rule:

Notice of Docket Opening: 14 A.A.R. 2376, June 13, 2008;

Notice of Proposed Rulemaking: 14 A.A.R. 2292, June 13, 2008.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Carlos Ramírez, Rules Analyst

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Department of Agriculture is amending R3-4-233 to exempt breeder seed trials from the permitting process; to define breeder seed and breeder trial; to redefine “mosaic-indexed” to

require laboratories that index lettuce seed for shipment to Arizona be certified by the agricultural department of the laboratory's state of origin or by the Department, as provided by A.R.S. § 3-145, or be accredited by the National Seed Health System; and to broaden the area under quarantine to include territories of the United States. Under subsection (D)(2), the Department is also amending the rule to require that the labels attached to a container or sub-container of mosaic-indexed lettuce seed include the name of the certified or accredited lab that tested the seed. The rulemaking also broadens the permit section to allow a person to ship unindexed lettuce seed to Arizona to be mosaic-indexed.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business, and consumer impact:

The rulemaking requires laboratories that index lettuce seed for commercial propagation in Arizona to apply for certification from the agricultural department of their state of origin or the Department's state agricultural laboratory, or to apply for accreditation through the National Seed Health System. Fees prescribed in R3-5-104 are \$200 for initial certification and \$100 for certification renewal. Under R3-5-111, initial certification is valid for 12 months. Fees that other states may charge to certify a laboratory are unknown. There are no fees associated with the National Seed Health System. Additional costs to the producer may result from the requirement to include the name of the laboratory that performs a mosaic index test on the label for containers or sub-containers of lettuce seeds. The Department has determined that the benefits of achieving the objective of the rulemaking outweigh the costs.

10. A description of the changes between the proposed rule, including the supplemental notices, and final rule:

The Department is substituting the seven day time frame in subsection (F)(1)(d) with an amount of time to be specified on the permit. The Department's reason is to provide a person who imports unindexed lettuce seed for temporary storage under a permit with a reasonable amount of time to reship the seed out of the state. This allows the individual who applies for the permit and the Department to arrange for a suitable means for the unindexed seed to be exported. This does not substantially affect the impact of the rulemaking. Style and format changes were made as well as additional minor amendments as a result of public comment.

11. A summary of the comments made regarding the rules and the agency response to them:

The Department received two written comments that were nearly identical and third before the end of the comment period. The Department responded as follows:

Written Comment (2): The Department should amend the rule as follows:

- The definition of "breeder trial" should also reference trials conducted by researchers.
- Subsection (E)(4)(d) should state that an individual performing a breeder trial under subsection (E)(4) should be required to "remove and destroy all plants exhibiting pest symptoms from the breeder trial plot and place them in a sealed container for disposal in a landfill.
- Amend subsection (E)(4)(e) to substitute the word "TRIALS" for "TRAILS."
- Amend subsection (E)(4)(f) to reduce confusion as to who is responsible for destroying plants remaining in the field, the farmer cooperator or the breeder/researcher. The subsection should state that an individual performing a breeder trial should "destroy lettuce plants remaining in the breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.

Agency Response: The Department does not believe the suggested revisions will substantially affect the impact of the rule and has no argument with including them, except the third comment regarding "trials." To accept the suggestion would make the rule grammatically incorrect.

Written Comment: One company imports unindexed lettuce seed under ADA Plant Services Division No. 08-28. The seed is inventoried at its facility in Somerton where it is sold and shipped to various companies throughout the world. The biggest majority is exported and none of it is sold in Arizona under the agreement. Under the rulemaking, imported unindexed seed would have to be shipped back out within seven days. This would make the company's sale of unindexed seed too difficult to continue. However, this only represents a small amount of the business conducted and would not present a problem if the company did not continue doing it. This would also eliminate the risk of any commingling of indexed and unindexed seed or labeling by mistake unindexed as indexed.

Agency Response: The Department understands the difficulty the seven day export requirement in subsection (F)(1)(d) presents and does not believe that substituting it for a more flexible time-frame would substantially affect the objective of the rulemaking. Therefore, the Department will amend the rule accordingly.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Whether the rule was previously made as an emergency rule and if so, whether the text was changed between the making as an emergency and the making of the final rule:

Not applicable

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-233. Lettuce Mosaic Virus

ARTICLE 2. QUARANTINE

R3-4-233. Lettuce Mosaic Virus

A. Definitions. In addition to the definitions provided in ~~R3-4-201~~ R3-4-101, the following terms apply to this Section:

1. ~~"Integrity" means the planting location is free from the pest.~~ "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
2. "Breeder trial" means breeder seed grown to develop a new variety of lettuce. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E).
- 2 ~~3.~~ "Mosaic-indexed" means lettuce seed that has been tested by a laboratory approved by a state in which the laboratory is located. The testing sample shall contain at least 30,000 seeds and no seeds shall be found infected with the pest. that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus.
- ~~3~~ 4. "Pest" means the virus, lettuce mosaic virus.
5. "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.

B. Area Under Quarantine: All states, ~~and districts, and territories~~ of the United States.

C. Regulated Commodities ~~Covered~~: Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

D. Restrictions.

1. ~~Any lettuce seed imported into, transported within, planted, or sold in Arizona shall be mosaic-indexed unless authorized by a permit established in subsection (F). A person shall not import into, transport within, plant, or sell unindexed lettuce seed in Arizona unless the unindexed lettuce seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (F).~~
2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" ~~or shall be accompanied by an official certificate from the state of origin attesting that the seed is mosaic-indexed as well as the name of the certified or accredited laboratory that tested the seed.~~

3. ~~Lettuce transplants imported into, transported within, planted, or sold in Arizona shall be accompanied by an official certificate from the origin state that includes: A person shall not import into, transport within, plant, or sell lettuce transplants in Arizona unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state of origin, accompanies the shipment. The certificate shall declare:~~
 - a. The name of the exporter,
 - b. The variety name and lot number of the seed from which the transplants were grown, and
 - c. Verification that the seeds from which the transplants were grown ~~meet the requirement in subsection (E)(1) were mosaic-indexed.~~
 4. A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.
 5. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.
- E. Exemptions. The requirements of subsection (D) do not apply to:
- ~~a~~ 1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting,
~~or~~
 - ~~b~~ 2. ~~Any shipments~~ Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,
 3. Breeder trials for a plot of 1/20 of an acre or less, or
 4. Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:
 - a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot.
 - b. Provides the following written information to the Department within ten business days of planting breeder seed:

- i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees,
 - ii. A detailed map showing the location of each breeder trial plot,
 - iii. An identification number for each breeder trial plot,
 - iv. The name, address, telephone number, and email address for the breeder or researcher.
 - c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms.
 - d. Removes and destroys all plants exhibiting pest symptoms from the breeder trial plot and places them in a sealed container for disposal in a landfill,
 - e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY."
 - f. Destroys lettuce plants remaining in a breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.
5. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E)(3) and (E)(4).

E F. Permits.

- 1. ~~A lettuce breeder or researcher may apply for a permit for lettuce seed or transplants that have not been mosaic indexed, provided:~~
 - a. ~~Each permit is for a 1/20 acre plot or less,~~
 - b. ~~The applicant monitors the lettuce for pest symptoms,~~
 - c. ~~The applicant verifies the integrity of the fields,~~
 - d. ~~All plants exhibiting pest symptoms are destroyed, and~~
 - e. ~~The following statement appears on the bill of lading or invoice accompanying each shipment: "This shipment meets Arizona lettuce mosaic permit requirements. Permit number _____."~~
- 2. ~~A seed dealer may apply for a permit to import non-mosaic indexed lettuce seed for temporary storage in Arizona, provided:~~

- a. ~~Non-mosaic-indexed lettuce seed is shipped out of state and not distributed for use in Arizona;~~
 - b. ~~The seed dealer maintains and makes available for Department inspection during regular business hours an inventory record on all non-mosaic-indexed lettuce seed which includes:~~
 - i. ~~The quantity and lot number of non-mosaic-indexed lettuce seed;~~
 - ii. ~~The date and lot number of non-mosaic-indexed lettuce seed received by the seed dealer;~~
 - iii. ~~The date and lot number of non-mosaic-indexed lettuce seed shipped out of state by the seed dealer, and~~
 - iv. ~~The destination of each shipment.~~
 - c. ~~The permit does not preclude inspection of non-mosaic-indexed lettuce seed upon entering Arizona.~~
1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
- a. Maintains the identity of the seed while in Arizona.
 - b. Does not sell or distribute the seed for use in the state.
 - c. Does not transfer the seed to any other facility in the state.
 - d. Reships the seed from the state within a period of time specified on the permit.
2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.
- F. ~~A grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or documented circumstances beyond the control of the grower, or in the case of a permittee, as soon as the purpose of the crop is completed.~~
- G H. Disposition of Violation.
1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.

2. Any ~~untested~~ shipment of unindexed lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
4. Violation of any provision of ~~the~~ a permit issued under subsection (F) may result in suspension or revocation of the permit.